

Damian Dudley #17183
A.S.P.C. Barclay Unit
P.O. Box 3200
Buckeye, AZ. 85326

FILED	LI
RECEIVED	COPY
JUL 21 2011	

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
P DEPUTY

Damian Dudley,
Plaintiff,

V.

Captain Cesolini #A3347,
Defendant.

No. CVII-00387-PHX-SMM-LOA

AFFIDAVIT OF
DAMIAN DUDLEY

STATE OF ARIZONA } SS:
COUNTY OF MARICOPA }

I, Damian Dudley, hereby swear pursuant to the penalties of perjury that the following statements are true.

1. On May ~~20~~ 20, 2011 Plaintiff mailed Defendant's Attorney Amy L. Nguyen a letter requesting her permission to Motion this Court for an extension of time and a letter attempting to settle the discovery disputes.

2. On June 9, 2011 Plaintiff received a letter from Attorney Nguyen attempting to resolve the discovery disputes. (see Attachment A).

3. As of the date of this affidavit Plaintiff's discovery issues remain unresolved with the Defendant.

Damian Dudley
AFFIANT SAYETH NAUGHT

June 24, 2011
Date

Damian Dudley
Damian Dudley, Plaintiff

ATTACHMENT-A

JS&H JONES, SKELTON & HOCHULI, P.L.C.

AMY L. NGUYEN
TELEPHONE: (602) 263-1717
FAX: (602) 200-7871
E-MAIL: ANGUYEN@JSHFIRM.COM

2901 NORTH CENTRAL AVENUE
SUITE 800
PHOENIX, ARIZONA 85012
PHONE: (602) 263-1700
FAX: (602) 651-7599
WWW.JSHFIRM.COM

June 7, 2011

Damian Dudley #112183
A.S.P.C. Lewis/Buckley Unit
P.O. Box 3400
Buckeye, AZ 85326

Re: Dudley v. Cesolini, CV2010-013017

Dear Mr. Dudley:

I am writing this letter in an attempt to resolve the discovery disputes raised in your Motion to Compel, in accordance with Rule 37, Fed. R. Civ. P., and Rule 7.2(j), Local R. Civ. P. I have reviewed and considered your objections to Defendant's responses, and respond accordingly:

1. Interrogatory #1: Since providing the original responses, I have obtained additional information regarding Captain Cesolini's duties as Commander of the Lower Buckeye Jail, which is being provided in Defendant's Supplemental Response to Plaintiff's Interrogatories and Request for Production of Documents.

2. Interrogatory #4, #5 and #5a: Defendant's objections to this request remain the same and no further response will be provided. Additionally, contrary to your argument, whether other inmates filed a grievance pertaining to whether their personal property was confiscated during a shakedown does nothing to support your claim that *your* property was confiscated without due process, nor could any such disclosure reasonably lead to the discovery of admissible evidence. This is especially the case considering that you do not assert a *Monell* custom/policy claim in your First Amended Complaint.

3. Interrogatory #6: Defendant's objections to this request remain the same and no further response will be provided. Your objection to the response provided misinterprets and/or misstates Section 9 of the Inmate Rules and Regulations, as it clearly states: "Contraband is *any* unlawful or prohibited item . . .," and "Altered items are also considered contraband." Accordingly, any contraband taken from your cell during the shakedown was confiscated according to policy and no further information is available.

4. Interrogatory #6a, #6b and #6c: Defendant's objections to this request remain the same. However, in an attempt to resolve the discovery dispute, a supplemental response is being provided in Defendant's Supplemental Response to Plaintiff's Interrogatories and Request for Production of Documents.

JONES, SKELTON & HOCHULI, P.L.C.

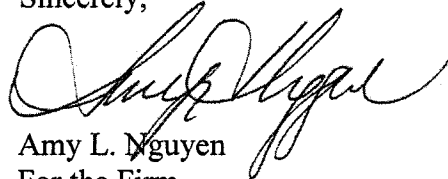
Damien Dudley
June 7, 2011
Page 2

5. Interrogatory #7 and #8: Defendant's objections to this request remain the same and no further response will be provided. The requests are improper interrogatories in that they call for improper legal conclusions and are not reasonably calculated to lead to the discovery of admissible evidence.

6. Interrogatory #13a: Defendant's objections to this request remain the same. However, in an attempt to resolve the discovery dispute, a supplemental response is being provided in Defendant's Supplemental Response to Plaintiff's Interrogatories and Request for Production of Documents.

As to your letter dated May 20, 2011, which was received by my office on May 31, 2011, I do not believe an extension of the May 31, 2011 discovery deadline is necessary on the grounds you cite in your letter. Specifically, you state that an extension is warranted because Defendant has not yet supplemented Interrogatory 2 and 3. First, the May 31st deadline pertains to discovery *requests*, not discovery responses. Second, the information requested in Interrogatory 2 and 3 is maintained by MCSO, not by Captain Cesolini. Nonetheless, Captain Cesolini requested the information from MCSO and is still awaiting a response. Once a response is received, Captain Cesolini's discovery responses will be supplemented in a timely manner.

Sincerely,



Amy L. Nguyen
For the Firm

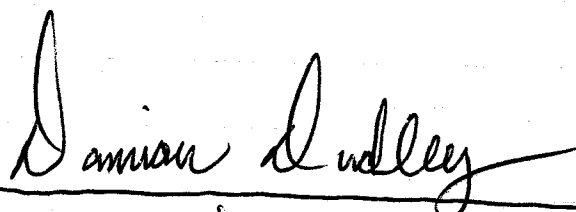
ALN/ae

Original and 2 copies of Plaintiff's second Motion to Compel Defendant to Respond to Plaintiff's Interrogatories and Request for Production of Documents given to the Barchey Unit Mailroom Officer this 26th day of June, 2011 to be mailed to:

Clerk U.S. Dist. Court
Sandra Day O'Connor U.S. Courthouse, Suite 130
401 W. Washington St., SPC-1
Phoenix, Az. 85003-2118

1 Copy of the foregoing mailed to:

Amy L. Nguyen
Jones, Skelton & Hochuli, P.L.C.
2901 N. Central Ave Suite 800
Phoenix, Az. 85012



Damian Dudley, Plaintiff

EXHIBIT-A

Damian Dudley 167143
Case 2:11-cv-00387-SMM-LOA
Arizona State Prison - Buckeye
P.O. Box 3200
Buckeye, AZ. 85326

Document 33 Filed 07/01/11 Page 8 of 21

MICHAEL K. JONES, CLERK
COC MAILROOM
DOCUMENT DEPOSITORY

2011 JUL -7 AM 10:31

No. CV 11-00387-PHX-SMM (LOA)

May 20, 2011:

To: Attorney Amy L. Nguyen,

I am writing you to request your permission to motion the Court in this case for an extension of time.

Since you still have not responded to plaintiff's interrogatories 2 and 3 by supplementating your responses

I am sending you two (2) Affidavits, Motion: Plaintiff Request an Extension of Time for Discovery Request Date and letters.

Please retain 1 copy of each document for your own records.

Send back 1 copy of each document and I will sign the motion and I will send the original motion, Affidavit to the Court.

Sincerely Yours

Damian Dudley

Damian Dudley
Plaintiff Pro-Se.

Danial Dudley #112183
Arizona State Prison-Buckley
P.O. Box 3200
Buckeye, AZ. 85326

May 20, 2011

To: Amy L. Nguyen,

I am attempting to settle the Plaintiff's
Interrogatories and Request for Production
of Documents.

I am requesting that you "please contact
the Arizona State Prison Complex-Lewis:

CO3 Inmate Records
P.O. Box 70
Buckeye, AZ. 85326

and/or

AZ. DOC. CO3
Inmate Records
ASPC-Lewis/Buckley Unit
P.O. Box 70
~~PO Box~~ Buckeye, AZ. 85326

Contact - Inmate Records and tell them
you would like to have a telephonic
legal call with me.

So that we can discuss and possibly
settle any discovery disputes.

Sincerely Yours

Damian Dudley
Damian Dudley Plaintiff

Damian Dudley #112183
Arizona State Prison-Barney
P.O. Box 3200
Buckeye, AZ. 85326

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Damian Dudley,
Plaintiff,

V.

Captain Cesotini #A3347,
Defendant.

No. CV11-00387-PHX-SMM (LOA)

PLAINTIFF REQUEST AN
EXTENSION OF TIME FOR
DISCOVERY REQUEST DATE
ATTACHED AFFIDAVIT OF
ATTORNEY NGUYEN

Comes now the Plaintiff Damian Dudley
hereby motions this Court for an extension
of time to further conduct discovery.

Plaintiff has written Defendant's Attorney
Amy L. Nguyen a letter asking her if
this is okay for her.

I've included an affidavit of Attorney
Nguyen concerning this extension.

Plaintiff is sending her two copies so she
can send 1 copy back to Plaintiff and
send the original back to Plaintiff so
he can file it with this Court

RESPECTFULLY SUBMITTED this ____ day of May, 2011.

Damian Dudley, Plaintiff

CERTIFICATE OF SERVICE

2 letters to Attorney Amy L. Nguyen; 1 Affidavits
of Attorney Amy L. Nguyen; 1 Plaintiff Request an
Extension of Time for Discovery Request Date
mailed this 24th day of May 2011 to:

Attorney Amy L. Nguyen
Jones, Skelton & Hochuli, P.L.C.
2901 N. Central Ave Suite 800
Phoenix, AZ. 85012

Damian Dudley
Damian Dudley, Plaintiff

Amy L. Nguyen, Bar # 023383
Jones, Shelton & Hochuli, P.L.C.
2901 North Central Ave Suite 800
Phoenix, AZ. 85012

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Damian Dudley,
Plaintiff,

V.

Captain Cesolini #A3347,
Defendant.

No. CV11-00387-PHX-SMM (LOA)

AFFIDAVIT OF ATTORNEY
AMY L. NGUYEN

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS:

1. I am the named attorney Amy L. Nguyen.
2. I am the attorney of record for the Defendant Capt. Cesolini.
3. Defendant has yet to supplement his interrogatories.
4. It has been exactly days over the 30 days pursuant to Rule 33(b) Fed. R. Civ. P. Plaintiff mailed us his Plaintiff's Interrogatories and Request for Production of Documents on April 01, 2011.
5. The plaintiff has interrogated information that we are diligently searching for the records. (See Defendant's Response to Plaintiff's Interrogatories

and Request for Production of Documents (interrogatories no. 2 and 3 filed in this Court on May 05, 2011).

6. Since this has put the plaintiff's discovery on hold, the plaintiff has written me a letter requesting my concurrence for a 30 day extension of time.

7. I concur with the plaintiff for a 30 day extension of time in the interest of justice

8. Plaintiff has also mailed me a motion requesting an extension with an affidavit for me to notarize and sign and return to him for filing.

Amy L. Nguyen, Defendants Attorney

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2011.

Notary Public

My Commission Expires

EXHIBIT ~~A~~ B

Amy L. Nguyen, Bar #023383
JONES, SKELTON & HOCHULI, P.L.C.
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012
Telephone: (602) 263-1700
Fax: (602) 200-7811
anguyen@jshfirm.com

Attorneys for Defendant Captain Cesolini

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Damian Dudley,

Plaintiff,

v.

Captain Cesolini #A3347,

Defendants.

NO. CV11-00387-PHX-SMM-LOA

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S
INTERROGATORIES AND
REQUEST FOR PRODUCTION
OF DOCUMENTS**

Defendant Captain Cesolini, through counsel, hereby responds to Plaintiff's Interrogatories and Request for Production of Documents, dated April 1, 2011 and received by Defendant on April 8, as follows:

1. State your duties as the jail commander of the MCSO – Lower Buckeye Jail.

RESPONSE: Objection: Overbroad; vague and ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving objections, Captain Cesolini oversees the operation of the Lower Buckeye Jail.

2. Please give the name, rank and badge number of every officer involved in the cell searches conducted at the MCSO – Lower Buckeye Jail on October 27, 2009.

RESPONSE: Objection: Relevance; overbroad; vague and ambiguous as to "cell searches"; and not reasonably calculated to lead to the discovery of

1 admissible evidence. Without waiving objections, information has been requested
2 and will be supplemented once received.

3 3. Please identify all of the Detention Officers that conducted the cell
4 search on cell T24/B14, when you identify them (state their names, rank and badge
5 numbers).

6 **RESPONSE: Objection: Relevance; overbroad; vague and ambiguous**
7 **as to "cell search"; and not reasonably calculated to lead to the discovery of**
8 **admissible evidence. Without waiving objections, information has been requested**
9 **and will be supplemented once received.**

10 3a. Please produce the documents that details your job description and all
11 of the officers involved in the cell searches conducted on October 27, 2009 (identify each
12 detention officers job duties in accordance with their ranks), produce the documents.

13 **RESPONSE: Objection: Relevance; overbroad; vague and ambiguous;**
14 **calls for the production of confidential and security-sensitive information, the**
15 **disclosure of which could jeopardize facility security and not reasonably calculated**
16 **to lead to the discovery of admissible evidence.**

17 4. How many inmates at MCSO – LBJ filed grievances due to the cell
18 searches conducted on October 27, 2009? (Plaintiff is not asking for inmates' names and
19 booking numbers.)

20 **RESPONSE: Objection: Relevance; overbroad and unduly**
21 **burdensome; vague and ambiguous and not reasonably calculated to lead to the**
22 **discovery of admissible evidence.**

23 5. Of those grievances filed on October 27, 2009, how many pertained
24 to their personal books and personal magazines being taken from them?

25 **RESPONSE: Objection: Relevance; overbroad and unduly**
26 **burdensome; vague and ambiguous and not reasonably calculated to lead to the**
27 **discovery of admissible evidence.**

1 5a. Please produce copies of those grievances, produce the documents.

2 **RESPONSE: Objection: Relevance; overbroad and unduly**
3 **burdensome; vague and ambiguous and not reasonably calculated to lead to the**
4 **discovery of admissible evidence.**

5 6. Of all the books and magazines that were taken in that shakedown,
6 what happened to them, i.e., were they thrown away, donated to the MCSO library?

7 **RESPONSE: Objection: Vague and ambiguous; relevance; assumes**
8 **facts not in evidence and not reasonably calculated to lead to the discovery of**
9 **admissible evidence. Without waiving objections, pursuant to the Inmate Rules and**
10 **Regulations –Section 9, Contraband: “Altered items are also considered**
11 **contraband.....Any items in your possession that are contraband will be confiscated**
12 **and disciplinary action, and/or administrative actions, may possibly be taken against**
13 **you.”**

14 6a. Please produce the log book entries for the MCSO inmate library for
15 the dated of October 27, 2009 to November 27, 2009, produce the documents.

16 **RESPONSE: Objection: Relevance; vague and ambiguous as to “log**
17 **book entries”; and not reasonably calculated to lead to the discovery of admissible**
18 **evidence.**

19 6b. Please produce the MCSO – Lower Buckeye Jail log book entries for
20 October 27, 2009 pertaining to any and all cell searches conducted that day, produce the
21 document.

22 **RESPONSE: Objection: Relevance; vague and ambiguous as to “log**
23 **book entries”; and not reasonably calculated to lead to the discovery of admissible**
24 **evidence.**

25 6c. Please produce the policy index, produce the documents.

26 **RESPONSE: Objection: Relevance; vague and ambiguous as to**
27 **“policy index”; overbroad and not reasonably calculated to lead to the discovery of**
28 **admissible evidence. Without waiving objections, see the Rules and Regulations**

1 **Handbook for Inmates, a copy of which was given to Plaintiff upon intake at MCSO.**

2 6d. Please produce the CD/DVD from the security cameras at the MCSO
3 – Lower Buckeye Jail on October 27, 2009 showing just the detention officers conducting
4 cell searches and carrying out the books and magazines, produce the things.

5 **RESPONSE: Objection: Relevance; vague and ambiguous; overbroad;**
6 **calls for the production of confidential and security-sensitive information, the**
7 **disclosure of which could jeopardize facility security and not reasonably calculated**
8 **to lead to the discovery of admissible evidence. Without waiving objections, upon**
9 **information and belief, surveillance video is automatically recycled/erased over every**
10 **90 days. Any surveillance video from Plaintiff's housing pod has since been recycled**
11 **and therefore, is no longer available.**

12 7. Are you familiar with Arizona Revised Statue section 31-228(a)?

13 **RESPONSE: Objection: Relevance; vague and ambiguous; calls for an**
14 **improper legal conclusion and not reasonably calculated to lead to the discovery of**
15 **admissible evidence.**

16 8. Are you familiar with the case Sandin v. Conner, 515 U.S. 472, 115
17 S.Ct. 2293 where it talks about state created regulations thus creating due process?

18 **RESPONSE: Objection: Relevance; vague and ambiguous; calls for an**
19 **improper legal conclusion and not reasonably calculated to lead to the discovery of**
20 **admissible evidence.**

21 9. Are you familiar with Sandin v. Conner, 515 U.S. 472 where it states:

22 Sandin does not apply to pretrial detainees, who may not be
23 punished without due process of law regardless of state
regulations.

24 **RESPONSE: Objection: Relevance; vague and ambiguous; calls for an**
25 **improper legal conclusion and not reasonably calculated to lead to the discovery of**
26 **admissible evidence.**

27 10. In your answer to Plaintiff's First Amended Complaint on page 2
28 affirmative defenses #4 you stated:

1 Defendant alleges that Plaintiff failed to exhaust available
2 administrative remedies prior to filing suit, including but not
3 limited to Plaintiff's obligation to exhaust under the Prison
4 Litigation Reform Act 42 U.S.C., sec. 1997e(a).

5 10a. Is it your position that the Plaintiff Dudley never filed any grievances
6 (pursuant to MCSO rules and regulations) in this matter?
7

8 **RESPONSE: Objection: Vague and ambiguous; relevance and not**
9 **reasonably calculated to lead to the discovery of admissible evidence. Without**
10 **waiving objections, no.**

11 10b. If you answered yes, then do you deny ever responding to an inmate
12 grievance appeal forms in this matter (submitted by the Plaintiff Damian Dudley)?

13 **RESPONSE: Objection: Vague and ambiguous; relevance and not**
14 **reasonably calculated to lead to the discovery of admissible evidence. Without**
15 **waiving objections, see response to 10a, above.**

16 11. Before you answer #10(a)(b), can you please contact the custodian of
17 records for MCSO, did you ever receive a notice of claim in this matter?

18 **RESPONSE: No, Plaintiff did not serve Defendant Cesolini with a**
19 **Notice of Claim in this matter.**

20 12. State the names, rank and badge numbers of all detention officers
21 who were present during the cell searches conducted on October 27, 2009 at LBJ T24/B
22 pod (even those who were present but did not participate in the cell search).

23 **RESPONSE: Objection: Duplicative; relevance; overbroad; vague and**
24 **ambiguous and not reasonably calculated to lead to the discovery of admissible**
25 **evidence. Without waiving objections, see response to Interrogatory no. 2, above.**
26 **Additionally, upon information and belief, Defendant was present during the**
27 **"shakedown" that took place in Lower Buckey Jail, Bravo Pod, Tower/House 24, on**
28 **October 27, 2009.**

13 13. State the names, rank and badge numbers of all detention officers
14 who were working at the MCSO – LBJ on October 27, 2009.

1 **RESPONSE: Objection: Overbroad; relevance; vague and ambiguous**
2 **and not reasonably calculated to lead to the discovery of admissible evidence.**

3 13a. Produce any and all rules and regulations from MCSO that authorizes
4 the confiscation and destruction of inmates property because they exceeded the allotted
5 amount of 3 books and 5 magazines.

6 **RESPONSE: Objection: Vague and ambiguous as to "rules and**
7 **regulations"; overbroad; calls for the production of confidential and security-**
8 **sensitive information, the disclosure of which could jeopardize facility security; calls**
9 **for the production of confidential and proprietary trade information and not**
10 **reasonably calculated to lead to the discovery of admissible evidence. Without**
11 **waiving objections, see the Rules and Regulations Handbook for Inmates, a copy of**
12 **which was given to Plaintiff upon intake at MCSO.**

13
14
15 DATED this 5th day of May, 2011.

16 JONES, SKELTON & HOCHULI, P.L.C.

17
18 By 

19 Amy L. Nguyen
20 2901 North Central Avenue, Suite 800
21 Phoenix, Arizona 85012
22 Attorney for Defendant Edward Cesolini

23 ORIGINAL electronically filed
24 this 5th day of May, 2011.

25 COPY mailed this same date to:

26 Damian Dudley, #112183
27 A.S.P.C. Lewis/Buckley Unit
28 P.O. Box 3400
 Buckeye, AZ 85326

